IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 392 of 1994

with

CRIMINAL APPEAL No 847 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHUMANSINH UDAYSINH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 392 of 1994
   MR YU MALIK for Appellant
   MR BD DESAI, APP for Respondent No. 1
2. Criminal Appeal No. 847 of 1994
   MR BD DESAI, APP for Appellant
   MR YU MALIK for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 26/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant in Criminal Appeal No.392 of 1994 was the accused no.2 in Sessions Case No.1 of 1993 before the Additional City Sessions Judge, Ahmedabad. He has filed this appeal challenging the judgment and order dated 31st March, 1994 passed by the learned Additional City Sessions Judge, Ahmedabad convicting him of the offences under Sections 302 and 201 of the I.P.C. and sentencing him to life imprisonment and a fine of Rs.1,000/-, in default, Rigorous Imprisonment for three months and Rigorous Imprisonment for one year and a fine of Rs.500/-, in default, Rigorous Imprisonment for one month for the said offences respectively. However, he was acquitted of the offences under Sections 498-A and 498-B of the I.P.C. and Section 3 of the Dowry Prohibition Act, 1961. At the time of admission of the appeal, the Division Bench had issued notice for enhancement of sentence which is numbered as M.C.A. No.3352 of 1994.

2. Udaysinh (accused no.1), the father of the appellant Khumansinh was a Jamadar in the police force. He was allotted and living with his family in a room in Kagdapith Police Line Quarters. He had four sons Khumansinh (accused no.2), Popatsinh (accused no.3), Rameshsinh (accused no.4) and Bharatsinh (accused no.5). He had two daughters Sajjanben (accused no.6) and Kailasben. Sajjanben was married to one Balwantsinh Ratilal Parmar. Khumansinh was married to Akhamben in 1984. They had two children, one daughter Meena, aged about 5 years and a son, aged about 3-4 years. They were all living together in Room No.21 in the Police Line Quarters. Sajjanben too had come on a visit and was with them at the time of the incident. The room was on the first floor.

3. P.W.1 Leelaben Pratapsinh (Exh.14) was living with her family in Room No.17 on the same floor. There were three rooms between her room and the room occupied by Udaysinh's family. She knew Akhamben since she was her neighbour. She said that all the accused treated Akhamben well. She got up at about 6 o'clock in the

morning on 24th August, 1992. She went to the water tank, which was at some distance from the quarters, to fetch water. On the way, she saw Akhamben lying on the ground. She immediately came back. She met Shantaben and told her that Meena's mother was lying on the ground. Meena was Akhamben's daughter. According to her, Akhamben was taken to hospital but she did not know who took her to hospital. In the evening, she came to know that Akhamben had died.

4. P.W.10 Himmatsinh Devabhai (Exh.43) who was 1st Grade Jamadar was living in the adjoining room no.20. At about 7 o'clock in the morning on 25th August, 1992, he heard shouts that a woman was lying on the ground. Subsequently, he came to know that it was Akhamben. He saw from his room that Khumansinh, his son and Mahendra were taking Akhamben in a rickshaw. Subsequently, he came to know that Akhamben had died.

5. P.W.18 Dr. Dharmila G. Shah (Exh.59) was the R.M.O. in L.G. Hospital at that time. According to her, on 24th August, 1992, Dr. S.K. Mishra was the Casualty Medical Officer. Akhamben was brought to their hospital at 6.30 in the morning on that day. She was examined by Dr. S.K. Mishra who declared her dead. The case papers are at Exh.60 and the certificate is at Exh.61. It appears that Dr. Mishra had already left the hospital and he was not available and could not be examined as a witness at the trial. The certificate states that the dead body was brought by Udaysinh. However, Udaysinh was described as father. In the case papers, it appears that Akhamben's name was written as Akhamben Gumansinh. Udaysinh, therefore, gave an application (Exh.62) for correcting her name from Akhamben Gumansinh to Akhamben Khumansinh. Dr. Dharmila Shah stated that though Udaysinh was described as father in the certificate, it was a mistake and, in fact, the dead body was brought by the father-in-law since Udaysinh was the father-in-law of Akhamben.

6. P.W.16 Kalubhai Ramsinh Jamadar (Exh.53) was the duty constable in the hospital on that day. According to him, he took down the information given by the C.M.O. He conveyed that information on telephone to P.W.17 Kaushal Mishra (Exh.55) who was P.S.O. in Kagdapith Police Station. He recorded the information in the Station Diary and the entry is produced at Exh.56. The information was to the effect that Akhamben, wife of Khumansinh, resident of Room No.21, Kagdapith Police Lines had gone to the water tank behind the P.W.D. office to fetch water at 6 o'clock on 24th August, 1992

and she felt giddy and fell down and suffered an injury on her nose. She was brought for treatment to hospital by her husband Khumansinh Udaysinh but she was declared dead during treatment at 6.40 by the C.M.O. On receiving the report, P.W.14 Rambharan Bhagwansinh Dubey (Exh.48) went to the hospital, held inquest and after the inquest panchnama was prepared, he submitted a report for registering a case of accidental death. Then he sent the dead body for post-mortem.

7. P.W.5 Dr. V.V. Patil carried out the post-mortem between 12.00 and 1.00 o'clock on 24th August, 1992. He noted the following external and internal injuries on the dead body of Akhamben:-

External Injuries

1. Bruise on the Lt. Zygoma 3 x 2 cm. Red in colour.
2. Bruise on the Lt. shoulder 3 x 4 cm. Red in colour.
3. Blood is coming out from Nostril.

Internal Injuries

1. Scalp Haematoma on the frontal region and on the vault of scalp 10 x 15 x 1 cm
2. Fracture of the skull starting from the Lt. temporal region passes upward and toward the parietal region, crosses the midline and go to Rt. parietal, Rt. temporal and Rt. side of base of skull, to sphenoid bone crosses the midline in base and upto Lt. side of sphenoid bone.
3. The meninges under the fracture is torn, about 10.00 cm on the vault region. The brain is lacerated on the vault region 4 x 6 x 3 cm. Intradural Haematoma around the laceration of brain 200 ml.
4. Bruise on the Rt. side around the Ascending Colon 10 x 4 x 6 cm
5. Bruise on the Ascending Colon 10 x 4 cm.
6. Retro-peritoneal Haematoma on the Rt. renal, pelvic and supra-renal region about 1000 ml clotted and fluid blood. The Rt. kidney is ruptured at the middle transversely divides the kidney into two parts, from anterior aspect and, the two parts are joined by posterior flap. Kidney is bruised, the clotted blood is present around it.

It was noted in the post-mortem report that the injuries were ante-mortem. In his evidence, he said that the death was due to shock and haemorrhage from various injuries on the body. According to him, the internal injuries did not correspond with the external injuries but the internal injury on the head and the internal injury in the abdomen was each individually sufficient to cause death in the ordinary course of nature. The external injuries could have been caused by a blunt substance like a brick or a stone. The internal injuries in the abdomen could have been caused by a stone or kicks. He said that external injuries no.1 and 2 could have been caused by a fall, blows or a stone. He was shown a brickbat (Muddamal Article No.13) and he said that it could have caused the external and internal injuries which have been found on the dead body.

8. The post-mortem report clearly showed that it was a case of homicidal death and the fatal injuries were not possible by a fall. The learned counsel for the appellant did not dispute that the death was homicidal.

9. P.W.6 Motibhai Laxmanbhai (Exh.21), the father of Akhamben, was living in village Kharoli, District Panchmahals. According to him, Bharatsinh, accused no.5 came to his place at about 3 o'clock in the afternoon on 24th August, 1992. Bharatsinh told him that his daughter had been taken ill and was given transfusion in the hospital. Motibhai told him that they would come to Ahmedabad next morning. However, his brother-in-law Shanabhai came to him subsequently. He told him that his daughter had died. They, therefore, immediately went to Ahmedabad. When they came to the residence of his son-in-law, Bharatsinh, Rameshsinh, Popatsinh, Khumansinh, Udaysinh and Sajjanben were present in the room. His daughter was not there. When he inquired about her, Udaysinh told him that since his daughter was not well, transfusion was given to her and while she was going to fetch water, she had a fall and had died. However, he did not believe him. According to him, Khumansinh was demanding Rs.20,000/- from him and they felt that his daughter must have been killed. They, therefore, went to the Civil Hospital. He saw his daughter dead. His suspicion was aroused and he lodged a complaint at the Kagdapith Police Station. The complaint is at Exh.22. In the complaint, there was an allegation that the appellant Khumansinh had demanded Rs.20,000 for purchasing a new auto-rickshaw. He also alleged that since he did not pay the amount, Khumansinh had threatened to kill his daughter. He, therefore, alleged that the accused had caused internal injuries to his

daughter. The complaint was recorded at about 3.10 in the afternoon on 25th August, 1992 by S.P. Mr. R.V. Jotakia. A case of murder was registered on the basis of the said complaint. All the accused were arrested on 26th August, 1992 and their clothes were attached. The accused no.2 took the police and the panchas to the room no.21 from where an old baniyan, which appeared to be blood-stained, was seized. According to this witness, the appellant also pointed out a brickbat which was lying on the ground outside the window and that too was seized.

10. The room was again examined in the presence of an expert from the Forensic Science Laboratory and several ladis (floor-stones) and blood-stained threads were attached and the seizure panchnama was prepared on 26th August, 1992.

11. On 30th August, 1992, Motibhai, the father of the deceased Akhamben produced 11 post-cards, eight of which were allegedly written by the appellant and three of them by Akhamben. Opinion of the hand-writing expert was obtained who said that eight letters were in the hand-writing of the appellant. Though, at the trial, it was not admitted by the defence that these letters were written by the appellant, at the time of hearing of the appeal, the learned counsel for the appellant did not dispute that they were written by the appellant. On the contrary, he relied on the contents of the letters since, according to him, they were in favour of the appellant.

12. After obtaining the report of the Forensic Science Laboratory and completing the investigation, the police submitted a chargesheet against Udaysinh, Rameshsinh Udaysinh, Khumansinh Udaysinh, Popatsinh Udaysinh, Bharatsinh Udaysinh and Sajjanben. Kailasben, the younger daughter, who was aged about 15 years at that time, was chargesheeted in a juvenile court separately.

13. The charge against all the accused was framed under Sections 302 and 201 read with Section 34 of the I.P.C. and the appellant under Sections 498-A and 498-B of the I.P.C. and Section 3 of the Dowry Prohibition Act, 1961. The accused pleaded not guilty to the charge and claimed to be tried.

14. At the end of the trial, the learned Additional City Sessions Judge convicted the appellant of the offences under Section 302 and 201 of the I.P.C. However, he acquitted him of the offences under Sections 498-A and 498-B of the I.P.C. and Section 3 of the Dowry Prohibition Act, 1961. He also acquitted the other

accused of the offences under Sections 302 and 201 of the I.P.C.

15. The appellant has, therefore, filed Criminal Appeal No.392 of 1994 against his conviction and sentence. At the time of admission of the appeal, the Division Bench had issued notice for enhancement of sentence which is numbered as M.C.A. No.3352 of 1994. The State has filed Criminal Appeal No.847 of 1994 against his acquittal under Sections 498-A and 498-B of the I.P.C. and Section 3 of the Dowry Prohibition Act. The State has not preferred any appeal against the acquittal of the rest of the accused.

16. As stated above, it is not disputed that the death of Akhamben was homicidal. The question is who committed the murder. There is no eye-witness. This is a case of circumstantial evidence.

17. Mr. B.D. Desai, learned APP has submitted that the prosecution established the following circumstances which form a complete chain and conclusively prove the guilt of the appellant:

(i) The offence was committed in the room in which all the accused and Akhamben and her children were living.

(ii) The accused was present when the offence was committed.

(iii) False information was given at the hospital to the effect that Akhamben had gone to the water tank to fetch water and on the way, she had felt giddy and fallen down and suffered an injury on her nose. Similarly, false information was given to Motibhai, the father of Akhamben that Akhamben had been taken ill and had been hospitalised.

(iv) A brickbat was recovered at the instance of the appellant.

(v) The appellant had demanded Rs.20,000 from his father-in-law and had threatened to kill his daughter if he did not give the money. He repeated the threat on Rakshabandhan day when he went alone to see his father-in-law without his wife.

18. On the other hand, Shri Y.U. Malik, learned counsel for the appellant submitted that none of the circumstances was established and the evidence did not disclose or establish a complete chain of circumstances

to implicate the appellant.

19. Now, the prosecution has produced eight letters written by the appellant to his father-in-law to show that the appellant had demanded money from his father-in-law (Articles 14 to 21).

19.1 In the letter dated 31st March, 1991, the appellant said that he was writing since he wanted to buy a rickshaw and since the rickshaw was in a good condition, he had made a deal. Since he needed money, he had written the letter to ask for Rs.15,000/-. He, therefore, requested his father-in-law for the said amount. He said that if he got the rickshaw, he and his wife would get a new lease of life and that this was their last hope.

19.2 In the letter dated 16th January, 1992, the appellant said that he had kept a cheap rickshaw in good condition and it was priced at Rs.15,000/-. He pleaded for financial assistance and if his father-in-law helped him, he would think he had seen God.

19.3 In the letter dated 31st January, 1992, he said that he was plying a hired rickshaw and he intended to buy a second-hand rickshaw and he requested his father-in-law to arrange for Rs.5000-6000/-. He expressed his intention not to live in the house and he pleaded with his father-in-law to help him. In the remaining letters also, he similarly pleaded with his father-in-law to help him so that he could live separately with his family.

19.4 In the letter dated 3rd July, 1992, he wrote to his father-in-law that his wife had already made two attempts to commit suicide because they had been told that there was no place for them in the house and as a result of the shock, she had tried to sprinkle kerosene and kill herself but he had prevented her from doing so. He told his father-in-law to fetch his wife or else pay Rs.500/- for foodgrain.

20. In the letters written by Akhamben also, there is no grievance against her husband. In one of the three letters, she had made a reference to quarrels with her father-in-law.

21. Thus, these letters, far from showing any motive on the part of the appellant to kill his wife, show that he was under pressure from other members of his family to leave the house and that he wanted to buy a rickshaw so

that he could earn enough to support his family and, in fact, he was pathetically pleading with his father-in-law to help him out. In view of the above evidence, it is not possible to believe the oral evidence of Motibhai, the father of Akhamben and Sartanbhai Laxmanbhai, the brother of Motibhai to the effect that the appellant had demanded Rs.20,000/- and threatened to kill Akhamben, if the payment was not made. Naturally, they were enraged when they saw that Akhamben had been killed but the letters and record clearly show that the appellant had no reason to kill his wife. The appellant was, therefore, rightly acquitted of the offences under Sections 498-A and 498-B of the I.P.C. and Section 3 of the Dowry Prohibition Act.

22. Now, we go to the circumstances on which prosecution relies to prove the charge of murder against the appellant.

22.1 According to the prosecution, the crime was committed in the room. Now, the dead body of Akhamben was found at a place 78 feet away from the room. The prosecution has relied on the recovery of ladis from the room. However, the report of the Serologist shows that there was insufficient blood on the ladis and the origin and group could not be determined. Thus, there is no reason to believe that there was human blood on the pieces of ladis. The learned Additional City Sessions Judge has referred to a blood-stained baniyan recovered from the room but the F.S.L. report shows no blood was found on the baniyan. P.W.10 Himmatsinh Devabhai, who was living in the adjoining room, does not speak of any unusual happenings in the room occupied by the appellant and his brothers and father. It appears that at the time of arrest, the jersey which the appellant was wearing was seized. Again, the Serologist's report shows that the blood found was insufficient to determine its origin and group. Moreover, it is in evidence that it was the appellant who carried Akhamben in a rickshaw to the hospital and it is quite possible that the jersey might have become blood-stained when he travelled in the rickshaw with Akhamben. In the circumstances, it is not possible to say, with any reasonable certainty, that the murder was committed in the room itself.

22.2 According to the prosecution, the appellant was in the room. However, P.W.2 Rajendrakumar Himmatsinh (Exh.15) who was living in the adjoining room stated in his evidence that he was sleeping on the terrace and Popatsinh Udaysinh (accused no.3) and the appellant Khumansinh also were on the terrace. He was woken up by

his mother at 6 o'clock and at that time, he saw Popatsinh on the terrace but he had not seen Khumansinh. However, his evidence does not show when Khumansinh had left and it is not possible to infer that Khumansinh was present in the room, even assuming that the offence was committed in the room.

22.3 As for the false information given at the hospital, the medical certificate (Exh.61) shows that the dead body was brought by Udaysinh, the father of the appellant and there is no evidence to show that the information was given by the appellant. Again, the information to his father-in-law at his village was given by Bharatsinh (accused no.5) and not by the appellant. Moreover, P.W.9 Sartanbhai Laxmanbhai (Exh.42), the uncle of Akhamben, had stated in cross-examination that Shanabhai who was their relative had told him that Bharatsinh had also come to him and told him that Akhamben had died and Bharatsinh had told them that Akhamben had been taken ill so as to avoid giving a shock to them. Hence, this circumstance does not advance the prosecution's case any further.

22.4 According to the prosecution, a brickbat lying on the ground outside the room was discovered at the instance of the appellant but the report of the Serologist shows that there was insufficient blood to determine the origin and group of the blood and it was not shown that it was human blood. Recovery of the brickbat from an open space outside the house, which was accessible to all, is hardly a circumstance to implicate the appellant.

22.5 As for the demand for Rs.20,000/- said to have been made by the appellant from his father-in-law, we have already pointed out earlier that the letters written by the appellant clearly indicate that there was only a plea for help and no demand for dowry and it does not show any motive for the appellant to kill his wife.

23. Thus, the prosecution has failed to establish a complete chain of circumstances which would conclusively prove the guilt of the appellant. Criminal Appeal No.392 of 1994 is, therefore, allowed. The judgment and order of the learned Additional City Sessions Judge, Ahmedabad dated 31st March, 1994, in Sessions Case No.1 of 1993, convicting and sentencing the appellant for the offences

under Sections 302 and 201 of the I.P.C., is set aside. The appellant is acquitted of the said offences. Notice for enhancement of sentence is discharged. M.C.A. No.3352 of 1994 stands disposed of. He be set at liberty forthwith, if not required in any other case.

24. Criminal Appeal No.847 of 1994 challenging the acquittal of the appellant for the offences under Sections 498-A and 498-B of the I.P.C. and Section 3 of the Dowry Prohibition Act is dismissed.

(M.H. Kadri, J.)

(M.C. Patel, J.)

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